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HINDU GIFTS BILL.

(*Continued from page. 13*).

As regards the desirability of introducing the limitations contained in Ss. 13 and 14 of the Transfer of Property Act there will not be the same unanimity of opinion as will exist in the case of getting the principles laid down by the Judicial Committee in the *Tagore case* modified by legislation. According to these sections when a gift is made to A with a condition superadded that in case a specified uncertain event shall happen such interest shall pass to B and the event happens after A's death, the gift over to B will fail. That, however, is not the Hindu Law as administered now.

In *Sreemathy Surjomony Dossee* v. *Denobundoo Mullick and others*,[1] the Judicial Committee observed: "Whether there is anything against public convenience, anything generally mischievous, or anything against the general principles of Hindu Law in allowing a testator to give property, whether by way of remainder, or by way of executory bequest (to borrow terms from the law of England), upon an event which is to happen, if at all, immediately on the close of a life in being. Their Lordships think there is not; that there would be great general inconvenience and public mischief in denying such a power and it is their duty to advise Her Majesty that such a power does exist: such powers have long been recognised in practice." In this case the bequest was in these terms: "Should any among my said five sons die, not leaving any son from his loins, nor any son's son, in that event neither his widow, nor his daughter, nor his daughter's sons, nor any of them will get any share out of the share that he has obtained in the immoveables and moveables of my said estate. In that event, such of my sons and my son's son as shall then be alive, they will receive that wealth according to their respective shares. If any one acts in repugnance to this, it is inadmissible. However, if my sonless son shall leave a widow, in that event she

1. (1862) 9 M. I. A. 124 at p 135.

will only receive Co's Rs. 10,000 for her food and raiment." The condition here was to take effect on the death of the son without issue, such son being alive at the death of the testator. In other words the executory interest arose immediately on the termination of a life interest but the gift over was to take effect on an event which was to take place if at all immediately on the close of a life in being at the time of the testator's death. The gift over might be made to take effect at some period which might happen during the continuance of a life in being and not necessarily on the close of a life in being. We have no doubt that such a gift over would be valid notwithstanding that this question was left open for decision in a case before the Privy Council *Ram Lal Mookerjee* v. *Secretary of State.*[1] The contingency may be the happening of a specified uncertain event and if it is expressly provided that such event should happen before the expiry of a life in being then any gift over on the happening of such contingency will be valid. If the contingency does not happen within the period the gift over will not take effect. In a case before the Privy Council a gift to daughters with a condition that it should become absolute in case the daughters should have issue and that if they should have no issue it should go to such daughters having issue was held to be valid. See *Gurusami Pillai* v. *Sivakami Ammal.*[2] The contingency of having issue need not necessarily happen on the close of a life in being. Such might be the case if the contingency was, leaving issue. According to English Law regard must be had to possible and not to actual events. Whether this rule has any application to Hindu Law has not come for decision in the Indian Courts. In one case before the Calcutta Court the existence of such a rule was doubted. See *Bhaba Tarini Debya* v. *Peary Lall Sanyal.*[3] However this may be, a gift over to take effect on the happening of a contingency when it is expressly provided that such contingency should take effect on the close or during the existence of a life in being is valid under Hindu Law and there is absolutely no justification for interfering with such gifts.

We think it will be utterly wrong on principle to import limitations into the Hindu Law which are not recognised as the law even as now administered, in order that an erroneous principle of Hindu Law laid down by the Judicial Committee may be modified. The object of the Bill is apparently to enlarge the powers of testamentary disposition of a Hindu which are unduly restricted by the erroneous decision of the Judicial Committee. We take it that the object of the author of the Bill is not to restrict such powers. To do

1. (1881) I. L. R. 7 C. 304 (P. C.) 2. (1895) I. L. R. 18 M. 347.
3. (1897) I. L. R. 24 C. 646.

so will not merely be unwise and impolitic but will also be met with strong disapproval from the community.

According to the decision of the Judicial Committee in *Tagore* v. *Tagore*,[1] certain exceptions have been recognised to the principle that a donee must be in existence and it is better if this Bill is intended to deal with those exceptions, to define them accurately. The exceptions are referred to in the following observations of the Judicial Committee: "Their Lordships while adopting and acting upon clear general principles of Hindu Law that a donee must be in existence desire not to express any opinion as to certain exceptional cases of provisions by way of contract or of conditional gift on marriages or other family provisions for which authority may be found in Hindu Law."

The validity of a conditional gift on marriage under Hindu Law arose in a recent case before the Calcutta Court. See *Dinesh Chandra Roy Chowdury* v. *Biraj Kamini Dassee*.[2] In that case the testator made several bequests; one was to the would be wives of his two sons. The sons married after the death of the testator, persons who were found to be alive at his death. It was contended that the gifts to these would be wives were invalid under S. 99 of the Indian Succession Act made applicable to some Hindu wills by the Hindu Wills Act. The court held that although by S. 3 of the Hindu Wills Act the provisions of S. 99 of the Indian Succession Act were made applicable to the Hindus, the intention of the legislature was to leave unaffected the rules of Hindu Law. According to the principles of Hindu Law, a bequest made by a person to his son's would be wife, who was in existence at the time of the testator's death was valid, notwithstanding the provisions of S. 99 of the Indian Succession Act. The principle of this case is the same as that laid down by the Madras High Court in *Yethirajulu* v. *Mukunthu*.[3] In the latter case *Subramania Aiyar*, J. would seem expressly to state that the condition that the donee should have been in existence at the death of the testator need not be insisted upon in cases such as those he was considering. In the Calcutta case the learned judges referred to the previous decision of their courts in *Nafarchandra Kandu* v. *Ratnamala Debi*.[4] In this latter case the learned judges citing with approval the observations of the Privy Council in the *Tagore case*[1] dealing with the exceptional cases already referred to, relied upon Vyasa's text and the com-

1. (1872) 9 B.L.R. 377.
2. (1911) I L.R. 39 C. 87.
3. (1905) I. L. R. 28 M. 363.
4. (1910) 13 C. L. J. 85.

ments thereon by Jagannatha in his Digest, Colebrook, Book II, Ch. IV, S. 2. Para. 3 as authority for illustrating the exceptions. Whether this text of Vyasa and the comments of Jagannatha therein really support the exceptions is very doubtful. However, all that we are now concerned with is about the exceptions of the Hindu Law recognised by the Privy Council in the *Tagore case.* If the intention of the author of the Bill is not to deal with these exceptions he must introduce a saving clause recognising the exceptions whatever they may be.

S. 3 of the Bill is introducing an exception not recognised by the Hindu Law. According to the Hindu Law in the case of a bequest made to a person by a particular description the fact that there is no person answering to the description at the testator's death will not render the bequest void. The Calcutta and Madras cases already cited amply support this view. It is utterly wrong in principle to introduce as a substantive provision a restriction not recognised by the Hindu Law and then create exceptions to such restrictions. Dealing with the exception, it will be found that it relates to a person described as standing in a particular degree of kindred to a specified individual. Will the exception apply if the bequest is given to a person whom the testator states must stand in a particular degree of relationship to him? In other words does " the specified individual " refer to a person other than the testator or donee? If the illustrations afford any test, the words refer to some person other than testator. We do not see why the exception should be so restricted. Again referring to the word 'kindred' one is reminded of the contention made by counsel in *Dinesh Chandra Roy Chowdhuri* v. *Biraj Kaminee Dassee.*[1] The simple term " relationship" will remove all difficulties.

Before closing we have to note that the author confines S. 3 to devises. It does not appear why if it is necessary to introduce the exception in the case of bequests, it has not been thought necessary to introduce the benefit of the exception in the case of gifts. Of course if S. 3 is deleted we think under the existing Hindu Law the bequests coming under the exception will be valid even without the necessity of recognising the exception by any express enactment. So will it be in the case of gifts. If it is thought necessary to have the principle laid down in the exception recognised by express enactment the substantive portion may be deleted and the exception itself recast as a substantive section with the modifications already suggested.

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1. (1911) I. L. R. 39 C. 87.

However as we have said, all these are matters for the Select Committee and cannot be taken as any reason why the Bill should not be introduced. As we have already said the principle introduced by S. 2 is a very desirable one to be recognised by the legislature and it is hoped that success will attend the author of the bill in his attempt to get the erroneous decision on a question of Hindu Law rectified by legislation.

BOOK REVIEWS.

Legal Latin for India by F. J. Varley, M. A., Oxon, I. C. S. 1912, Thacker & Co., Ltd., Bombay. Price Rs. 2.

This little book purports to give a collection of Latin words and phrases and selected maxims with the compiler's explanations in relation to the Indian Law. A few select cases are also noted. We trust the book will be found useful by practitioners in India.

Hand Book of Criminal Cases by M. V. Desai and K. A Patel, Pleaders, Baroda, (1912.)

This is a collection of criminal. cases reported in the authorised Reports of Allahabad, Bombay, Calcutta and Madras from the year 1907 to 1911 both inclusive. It will be found useful by the practitioners in Criminal Courts and by the Magistrates and the Police. The publication would have been more useful if it had also included the cases printed in the unauthorized reports and the cases reported in the Chief Courts of Punjab and Burma.

The Law of Misrepresentation in relation to Limited Liability Companies by A. M. Brice, 1912, published by Sweet and Maxwell Limited, London.

This book puports to give an introduction to the subject of misrepresentation in relation to Limited Liability Companies. Except as provided by the Statutory Law the principles as to misrepesentation under general law equally apply to misreprsentationunder Limited Liability Companies. Chapter III deals speciall with statute law. All the other chapters deal with the principes of misrepresentation and the application of those principls to matters relating to Limited Liability Companies. We trust th book will be found useful by those for whom it is intended.

Goodeve's Modern Law of Personal Property, Fifth Edition 1912, by Messers. John Herbert Williams LL.M., Williams Morse Crowdy, B. A., published by Messrs. Sweet and Maxwell, Limited, 3 Chancery Lane, London, W. C.

After the publication of the last edition various amending and codifying statutes on important subjects relating to Personal Property have been passed. Of these, trade marks, patents companies and copyrights are the most important ones. The editors therefore had to re-write the chapters on these subjects and various improvements have been made in this edition. Goodeve's work is a standard work on the subject of Personal Property and we have no doubt the book will be found useful by the profession.

The Jenmi and Kudiyan Regulation V of 1071 of Travancore by K. S. Pandalai, B.A., B.L., Additional District Munsif, Kottayam, Travancore. Price Rs. 5.

This is a useful little commentary on the Jenmi and Kudian Regulation in force in Travancore. There is an introduction in which the history of the Jenmi tenure peculiar to the West-coast is given. We trust the book will be found useful by those who have to deal with land tenures in the West-coast.

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JOTTINGS AND CUTTINGS.

Sir Alfred Wills.—The death of Sir Alfred Wills removes from our midst a conspicuous example of the English judge, who, without brilliant qualities or exceptional learning, enhances the respect for the Bench by his unfailing determination to do justice without fear or favour and his courteous and dignified bearing. The late judge, who resigned his place on the Bench in 1905 after twenty-one years' service, was not a great lawyer like Lord Bramwell or Lord Blackburn, nor an outstanding personality like Lord Esher or Lord Brampton, but both as advocate and as judge he gained for himself by his sterling qualities of character a distinctive and enviable reputation. At the Bar, such was his integrity and his high sense of the honour of the profession, he was known as the legal Aristides, and when he retired from the Bench he was described 'as the most polished corner-stone of the Temple.' In his prime he was a most excellent judge, quick to perceive the bearing of every fact, slow to interrupt counsel or witness, and determined that no suitor should leave his Court with a feeling that his case had not been fully heard. To criminals who came before him he was always merciful, and he was not of those who believed that long sentences were the best remedy against crime. He was called upon to determine several notable civil and criminal trials, and after his retirement from the King's Bench he delivered on several occasions the judgment of the Judicial Committee of the Privy Council; but his most valuable judicial service to the country was as the first *ex-officio* President of the Railway and Canal Commission, where his sound common sense, his fair-mindedness, and his unfailing industry set a high standard which has been worthily followed. His was a life well spent, which brought honour to himself and to the profession which he adorned.—*The Law Journal.*

BOOK REVIEWS.

The Indian Limitation Act by S. C. Ghosh, B.A.,B.L., Vakil, High Court, Calcutta. Price Rs. 5-8.

We have already reviewed S. C. Ghosh's Limitation Act Part I in Vol. XX p. 163 of our journal. The learned author has re-published what was contained in Part I which was a commentary on the sections along with the commentary in the articles. The cases are collected under different articles and the difference in the law is also noted. The book is a handy one and we trust the book will be found useful by the judges and the practitioners.

A Digest of the Law of Agency by William Bowstead of the Middle Temple, Fifth Edition (1912) published by Messrs. Sweet and Maxwell Limited, 3 ChanceryLane, London, Price 20s.

Mr. Bowstead's Law of Agency has now become a standard work on the subject and the present edition maintains the reputation of its predecessors. For a concise and accurate statement of the principles of law the book has not been surpassed and we trust the book will be found useful by all classes of the profession.

The Leading Cases in the Criminal Law by A. M. Wilshere, M.A., LL.B., of Gray's Inn (1912) published by Sweet and Maxwell, Limited, 3, Chancery Lane, Price 8s.

This is a useful collection of leading cases on Criminal Law intended specially for students. The cases are well selected and the selection will be found useful by those for whom it is intended.

Lindley on Partnership—Eighth Edition (1912) by W.B. Lindley, T. G. Tomlins and A.A. Uthwat published by Messrs. Sweet and Maxwell, Limited. Price 38s.

This is the eighth edition of Lindley's treatise on partnership. It is a standard and classical treatise on the subject and it hardly needs any recommendation at our hands. Since the publication of the last edition The Limited Partnership Act of 1907 was passed by the English Legislature. The book we need hardly state will be a thoroughly safe and reliable guide in this branch of the law and the text has been revised and brought into harmony with the cases reported since the publication of the last Edition. We trust the book will be found useful to the profession.

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*PROFESSIONAL ETHICS.

I have already observed that while an advocate should always act with fairness and with the full recognition of the obligations of an honorable warrior in the discharge of his duties in fighting for his client, he should at the same time shrink from no sacrifice necessary for its proper discharge, and he should take no account of any unpopularity that he might incur or any inconveniences that he might be personally put to in the discharge of his duties. At the same time he should not allow himself to be made an instrument of injustice or of oppression by his client.

In the code drawn up by the Ontario Bar Association we find this: (rule 30) "An attorney is under no obligation to minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the attorney's conscience in professional matters. He cannot demand as of right that his attorney shall abuse the opposite party or indulge in offensive personalities. The attorney, under the solemnity of his oath, must determine for himself whether such a course is essential to the ends of justice and therefore justifiable." I adopted a brief way of expressing the restraints on the advocate's following out the instructions of his client by saying that his duty to his client is modified by his duty to the client's opponent, to the public, to the court and to his professional brethren. It may be his duty to attack the character of the opponent but only in so far as that has a real and material bearing on the determination of the merits of the particular contest, not with the intention to prejudice that opponent in the eyes of the court as generally a bad man. There can be no doubt that any such attempt to throw dirt generally fails of its purpose and recoils on the person who resorts to that base expedient for both judge and jury are prejudiced against a person who unnecessarily attacks the character of another.

Now, another matter about which you would have to be careful is not to in any manner leave the control of the case to the client.

*The fifth of a series of addresses delivered by the Hon'ble Mr. Justice P. R. Sundara Aiyar, one of His Majesty's Judges of the High Court of Judicature at Madras, to the apprentices of the year 1910-1911 at the request of the High Court.

While it is true in a broad sense that an advocate is bound to act according to the instructions of his client, there are several matters in which he ought not to do so. In deciding what is proper to be done during the conduct of a case, the advocate ought not to yield to the opinions of his client. A client no doubt has a right to decide for himself what rights of his should be pressed, but he has no right to require his advocate to do it in the manner he chooses. In other words, the advocate fights for his client but he has not to take the rules of warfare from him. Unfortunately it is too often the weakness of advocates, no doubt in their desire to retain their clients and to win more clients, to defer too much to the wishes of their client. This is sometimes carried out so far as to abuse the opposite side, to abuse the witnesses who appear in support of the case of the opponent and generally to abuse every one connected with him. In these matters a client ought to have no voice.

Marchant in his *Barrister-at-law* observes "counsel cannot share the conduct of the case with his client. If counsel is instructed, he ought to be at the head of the case and conduct it throughout. It is not becoming for counsel to submit to any limitation of the ordinary authority of counsel in this respect, or to take a subordinate position in the conduct of a case. If a litigant conducts his case in person, examines and cross-examines witnesses counsel will not be allowed to suggest questions and argue points of law. In a case reported in I Moody and Robinson page 454 where a Barrister holding a brief in a case was merely taking notes but the plaintiff himself conducted his case in person and examined witnesses and on a question arising with respect to the admissibility of evidence, the counsel claimed to be heard on behalf of the plaintiff. Alderson B. said "I think I ought not to hear you at all. Either a Barrister is retained in a case, or he is not; if he is retained in it, he ought to be in his proper place—at the head of it, and to conduct it throughout. The institution of Barristers is principally to assist the court in the dispensing of justice: and the present is one among many instances which shew that if parties persist in conducting their own causes, no time and no strength would be sufficient to get through the business of the country."

"I am aware that there are many precedents to bear out the learned counsel in consenting to stand in his present position, but at the same time I think it a very objectionable practice."

The objections to the practice do not consist merely in the court having to hear both the litigant and the advocate but in the inconsistency of the position of an advocate in consenting to take an inferior place in the conduct of the case.

In another case stronger expressions were used. In *Strauss* v. *Francis*,[1] Counsel agreed to the withdrawing of a juror who was trying the case with other jurors. This course was objected to subsequently by the client. Justice Blackburn said—" Mr. Kenealy has ventured to suggest that the retainer of counsel in a cause simply implies the exercise of his power of argument and eloquence. But counsel have far higher attributes, namely the exercise of judgment and discretion on emergencies arising in the conduct of a cause, and a client is guided in his selection of counsel by his reputation for honour, skill and discretion. Few counsel, I hope, would accept a brief on the unworthy terms that he is simply to be the mouthpiece of his client. Counsel, therefore, being ordinarily retained to conduct a cause without any limitation, the apparent authority with which he is clothed when he appears to conduct the cause is to do everything which, in the exercise of his discretion, he may think best for the interests of his client in the conduct of the cause. And if within the limits of this apparent authority he enters into an agreement with the opposite counsel as to the cause, on every principle this agreement should be held binding."

Mellor J. said—" No counsel, certainly no counsel who values his character, would condescend to accept a brief in a cause on the terms which the plaintiff's counsel seems to suggest, viz., without being allowed any discretion as to the mode of conducting the cause. And if a client were to attempt thus to fetter counsel, the only course is to return the brief. I am quite sure no such limitation of authority was consented to by the counsel on the present occasion."

This rule of course, does not mean that an advocate should bind his client without his authority by an act of his own in a matter which concerns his right to any property or his reputation. It is not for him to decide whether that should be defended or not. It is with respect to the manner of the defence, the manner in which the fight is to be carried out, and the principles which are to guide the advocate in doing so, that he ought always to have the full control and discretion. If a client is unreasonable or attempt to use an advocate, as the instrument of his own vengeance or malevolence or otherwise insist on his acting in a way which is inconsistent with the honourable principles that should guide the conduct of an advocate the proper course is to refuse to have anything more to do with the case. It would hardly be desirable that he should claim to continue his service and at the same time to press his right to conduct it in the manner that he considers proper. There may be occasions when he is not able to withdraw, because the client will not do what the advocate is entitled

1. (1866) L. R. 1 Q. B. 379.

to ask that he should do before the advocate can withdraw. If that is the case, then it is clearly his duty to act on what he considers to be the right principle. You will see that this question is of much importance in the actual practice of the profession. A most ordinary occurrence is that a client wants to take advantage of difficulties—temporary difficulties—in the way of the opposite side. An adjournment is wanted for a legitimate purpose. The application for adjournment is supported by proper reasons. The client wishes the advocate to oppose it. I do not think that, unless the client satisfies the advocate that his interests are likely to suffer by the adjournment, to suffer, not by the opponent being able to make a fair fight but otherwise by the delay such as by his witnesses disappearing or by the opposite side really requiring the adjournment to concoct evidence or for other improper purposes, the advocate should have no hesitation in setting aside the wishes of his client and agreeing to a proper application for adjournment. Clients very often are anxious that the opposite side should not be able to make a good fight. They desire to take advantage of every difficulty of the opponent. But it is not right on the part of an advocate to listen to his client's wishes in such a matter. I apprehend that many a request by the opposing advocate is in practice refused even by many who ought to know better on the ground that his client opposes it. This is the case not merely in the matter of adjournment. There are many other matters where the client wishes to act oppressively against his opponent and instructs his advocate to do so. All such requests should be unheeded. In the Ontario Code, Rule 33 is in these terms—" As to incidental matters pending the trial not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite attorney to trial when he is under affliction or bereavement, forcing the trial on a particular day to the serious injury of the opposite attorney, when no harm will result from a trial at a different time ;. the time allowed for signing a bill of exceptions, cross interrogatories and the like, the attorney must be allowed to judge. No client has a right to demand that his attorney shall be illiberal in such matters, or that he should do anything therein repugnant to his own sense of honour and propriety ; and if such a course is insisted on, the attorney should retire from the cause."

Now having dealt with the principles which should guide his action in not yielding too much to the wishes of his client we must proceed to consider in some detail the various duties of the advocate towards his client. To begin with, when a client goes to an advocate he should express his candid opinion on the case. He should point out to him the difficulties in the way of his success

in the litigation which he wishes to undertake. A client may have a very honest and true case but it may not be possible to bring it home to a Judge or jury trying it. It will be the duty of the advocate to show that however true the case may be the chances of success are not proportionate to the honesty of the claim. To the beginner undoubtedly the temptation will be great to convince himself that every case which comes to him is likely to succeed and to exaggerate to the client the chances of success. There are many pitfalls which the best case may meet in its way to recognition by a Court. These must be clearly exposed to the view of the client. On the other hand a dishonest case may have good chances of success on account of the difficulties that beset the proof of the case by the opposite side. An honourable advocate will not be anxious to put before his client the difficulties that his opponent will have in establishing a true case. The most noble mission that an advocate can fulfil is to promote peace, to discourage dishonest claims though they may appear to have chances of success in a Court of Law. It is not his duty to encourage every suit that may have a chance of success, while it is his duty to discourage all dishonest, all devious litigation. To quote again from the Ontario Code Rule 35 is "The miscarriages to which Justice is subject, and the uncertainty of predicting results, admonish attorneys to beware of bold and confident assurances to clients, especially where the employment depends upon the assurance, and the case is not plain."

Rule 38 is—" An attorney should endeavour to obtain full knowledge of his client's cause before advising him, and is bound to give him a candid opinion of the merits and probable result of his cause. When the controversy will admit of it, he ought to seek to adjust it without litigation, if possible."

I know that an adherence to this rule may cost you many a brief because it unfortunately is the case that many clients go to the man who holds out the boldest promise of success. A client imagines that the advocate who does so has found some means of success which the fairer and more honorable advocate has not been able to discover. A mistake of this kind no doubt is found out in time and every person who tries to dupe his client in this way, is exposed sooner or later and instead of winning clients he is sure to lose them in the long run. But it is not enough that one should not try to obtain business or to increase his business by giving expression to opinions which he is unable conscientiously to form. I do think the noblest function of an advocate would be performed if he should advise his client to seek peace rather than war. If he would counsel conciliation instead of fight I am sure he would be adopting the readiest means of obtaining

the confidence of the public in course of time. This should be done particularly when he finds that the client is trying to press some legal right which is inconsistent with the justice of the relations between him and his opponent, or with what would be considered honourable and proper by society. The law is not always able to do perfect justice between man and man and it is the function of an advocate to see, where the law is not equal to what undoubtedly is the task that it has set itself before it to supplement the law by his own counsel of peace and good will between his client and his opponent. It is of course a very different question whether if the client does not accept the advice it would be right to refuse him his services. That question I have already dealt with. I would hesitate to say that where there is no question of deciding whether the client's case is just or not, where on the admitted statement of his own case, the claim is absolutely dishonest, any advocate is bound to lend his services to a client. It is always difficult to draw the line whether owing to the dishonesty of the claim one may refuse to appear for a client, for it may well be said that every one is entitled to enforce his legal right and an advocate learned in the law has no right to set for his client a standard higher than the law of the country has prescribed. That is no doubt the ordinary principle on which an advocate should act, always abstaining where it is impossible for him to accord his sympathy to his client on account of the nature of his claim, from doing any more than his duty and to make it clear to his client that he would do no more than his duty. But there may be cases where the claim is so unconscientious or fraudulent, though the law is not able to circumvent the fraud, that it would not be wrong to refuse to appear in support of the claim which the law recognises. I hesitate to go so far as to say that any one would be acting wrongly in taking a case which the law will sustain but then the advocate's duty is clear thus far at least that he should do in such a case no more than his strict duty to his client requires, and that he should not by any act of his facilitate the perpetration of the fraud. An advocate should also counsel his client not to insist on a claim that is oppressive on his opponent. For instance if a rate of interest is provided which according to the law of the land is enforceable but which would beyond doubt ruin the opponent while there is no moral fault to be laid to his charge, it would be a most proper exercise of the advocate's function to prevent the full enforcement of such a claim. Some advocates are very chary in the matter of interfering between their clients and their opponents in bringing about a settlement of the dispute. Sometimes they are very properly incredulous about the possibility of a compromise being

finally brought about and they refuse to waste their time on a matter which may not after all lead to any useful result. Sometimes they are afraid that the compromise itself may possibly lead to some litigation in the future, and they do not wish to have the possible trouble arising from direct connection with a matter that might lead to litigation. Now it is possible to carry caution too far in this respect. It is very often the case that the settlement of a dispute may bring about rapproachment between the parties and that friendship may result where quarrel existed before and that neither party would be anxious to seek out fresh means of quarrel in the future. I would say,—Act rather in the hope that the avoidance of present litigation may bring about better relations between the parties so that permanent peace may be restored between them. But it is also desirable to say one word of caution. Do not be precipitate in effecting a compromise; act with full deliberation and try to look as far ahead as possible so that all means may be taken to safeguard the permanency of the peace that is attempted to be brought about; and on no account allow your own trouble in conducting a complicated case to have any share in deciding whether it is better to fight or to settle a matter. The interests of the parties and the desirability of restoring good will between them should be the only consideration. Where you find the opponent fighting a dishonest cause with, it may be, chances of success, it will be right and in accordance with perfect honesty to show a stern fight on behalf of your own client if by that means you can induce the opponent to shew a better sense of fairness. At the same time it is also absolutely necessary that no oppression should be practised on the opposite side. No undue advantage should be taken of temporary difficulties in order to induce him to a compromise which otherwise you are not entitled to. These are duties which the advocate has to perform at the threshold of his engagement with his client.

Now when the advocate has decided to accept an engagement what are the principles that regulate his duties towards his client? In considering this question one may perhaps say broadly that in many respects the relation between a vakil and his client.—I say vakil advisedly now because the position of a barrister is somewhat different, are similar to those between an agent and his principal. Many of the duties and rights of a vakil flow from the principles regulating the law between an agent and his principal. The extent to which he can bind his client by acts and statements of his, the principles on which he is entitled to remuneration and to a lien on his client's property the disability to which he is subject in several important particulars which we shall have to deal with all flow from

this relation. At the same time his duties are not to be measured by the mere commercial nature of the relation between an agent and his principal. Nor is he to decide the ethical standard which he wiil adopt by what an agent may do in his relations with his principal. In some respects he is above the client; while bound to protect his interest and not to disregard his instructions, the code of honour according to which he will act will he higher than many a client may be prepared to adhere to. In England the rules which regulate the relations between a barrister and his client cannot be put on the rules of principal and agent, though in several respects those rules will have to be looked to; because a barrister, no more than an attorney is not entitled to act beyond the instructions of his client, or to compromise a cause which his client is unwilling to settle. At the same time a barrister stands above the position of an agent over his client in important particulars. In fact his rights and duties are not governed by any contract between him and his client. You know that there is an intermediary in England between a barrister and his client, viz., the solicitor. The barrister does not deal directly with the client at all in any controversial matter. He does come into direct relationship with him in advising him in non-contentious business, and in drawing up wills; he is also entitled to act without the intervention of a solicitor in trials before special bodies as distinguished from the regular tribunals of the country. It is more or less a matter regulated by convention and by statutes in what cases a barrister may be directly instructed by his client. Nor is there any statutory sanction for the long established etiquette that a barrister should not deal directly with a client. It is the custom of the profession which however has received indirect judicial sanction in *Bennet* v. *Hale*,[1] where the Court approved of the principle and expressed a desire that the custom should be adhered to. The barrister's fee is paid by the solicitor. He cannot enter into any contract with his client about it. He cannot sue his client for his fee and the client cannot sue a barrister for negligence in the discharge of his duties. It is perhaps unncessary to deal with the rules that regulate the conduct of a barrister to his client in the course of these lectures at more length. We shall therefore proceed to the duties and set down the rules relating to vakils which in many respects are very similar to those of a solicitor in England. The law in America would be a fairly good guide in determining these rules because as you are aware there are not there two distinct branches of the profession. All are attorneys though in practice

1. (1850) 15 Q. B. 171.

some attorneys do the work of barristers and others do the work of solicitors an arrangement which has a great deal to recommend it. Many a man does the heavy and plodding work of a solicitor calculated to instruct him in all the details of the work of the profession for a considerable time in life. Afterwards he begins to plead in Court and gives up the work which a solicitor ordinarily does. It is an undoubted fact that there are many who may make excellent solicitors while they may have very poor chances of making good pleaders in Court. And it is much to be desired in this country in my opinion that there should be a division of work so that some will undertake the work of a solicitor while others might do counsel's work and it is certain that original litigation would be conducted very much better than it now is if this division of work were resorted to. As it is, what we find in the Courts in the moffussil is that a man who has got original litigation has too many cases to attend to. It is not possible for him to give continuous attention which an original suit requires from time to time to make the case really ripe for hearing in a manner that will not entail needlees waste of the time of the Court and of the parties. He is obliged to ask for and obtain numerous adjournments for the purpose of enabling him at the last moment to make himself ready for hearing and the chances are that this practice really leaves him illprepared even with the indulgence that Courts feel themselves bound to grant in the interests of Justice. It would be possible to bring cases to a conclusion with much more despatch, with much more thoroughness and with much better chance of doing every thing possible for a client if practitioners should combine and divide the work that is to be done in original litigation in the manner that is in vogue in America. In the case of appeals no doubt this may be unnecessary, but it is of great importance in original litigation.

The law is that so long as a client has a vakil in the cause he cannot himself appear. This is laid down in the rules of practice on the appellate side. Now it is the duty of an advocate which should be properly realised that he should in no way stand in the way of his client getting additional guidance and additional help by the employment of additional vakils, and a request of this sort should not be treated as indicating want of confidence on the part of the client. It is natural, as it is usual, for clients to get discouraged at times and to feel that their counsel would not be the worse for consultation with another. It is sometimes the case, I am afraid more often than is proper that the desire on the part of client to engage some one else along with the vakil whom he has retained, is regarded

with distrust. Now act honestly on the principle that two heads are better than one. If you really feel that the client has no confidence in you then retire from the case leaving him the liberty to engage any one he likes. That is the only honourable course to pursue, at the same time no doubt insisting on his safe guarding your interest by the payment of any fee which may be due from him. Never stand in the way of his having the person in whom he has confidence. The law is that a client may discharge his vakil or attorney at any time he pleases. There are no provisions in the rules of practice applicable to this country which prevent the client from doing so and I find that in England and America also an attorney may be discharged by the client provided only he pays him all fees that may be due to him, while on the other hand an advocate would not be acting rightly in retiring from a case at any time that he pleases. I have no doubt that you will realize that this is reasonable. A person who has undertaken a duty of confidence towards another should not be at liberty to abandon it while at the same time the individual who reposes confidence on another ought to be at liberty without having to state reasons to revoke that confidence at will.

NOTES OF INDIAN CASES.

Dosabai *v.* Special Officer Salsette Building Sites.—14 Bom. L. R. 592.—This is an interesting case under the Land Acquisition Act. Certain lands were acquired by the Government for public purposes and a special officer was deputed to take the necessary steps for this acquisition under the Act. He apparently made the enquiry and as a result of that he proposed to award a sum of Rs. 50 per acre but owing to some administrative order requiring him to submit the papers to the Collector when the amount awarded exceeded a certain sum he submitted the papers and as a result of that reference he was directed to award compensation at the rate of Rs. 4 per acre and he made the order. A reference was asked for and was made to the District Court who made an award at the rate of Rs. 14 per acre. The contention was that it should be at the rate of Rs. 50 per acre as recommended by the Special Settlement officer. The Bombay High Court upheld this contention. The reasoning proceeds upon the view that the special officer is the person entitled to make the award and when that officer was appointed he should be allowed to prosecute his own inquiry without the interference of Government and to make his own award, and that the opinion of the Executive Government under whose instructions the acquisition is sought to have been made cannot be substituted for

the opinion of the Land Acquisition Officer. The rate which the Land Acquisition officer proposed to give and not the rate which he actually gave by resolution of the Government was awarded by the High Court. It does not appear whether the Government contended that that rate was excessive or any inquiry was made about it. This decision would seem not altogether to harmonise with the decision of the Madras High Court in a recent case. See *Gangadhara Sastri* v. *The Deputy Collector of Madras.*[1] The scope of the Land Acquisition Act and the *prima facie* reading of that Act leads one to take the view that the collector or the Land Acquisition officer is an agent of the Government more or less, and that if the award of the Land Acquisition officer is not satisfactory to the parties the owner of the property may appeal to the District Court which is constituted as a special forum. The Land Acquisition officer is bound to take into consideration certain items and is not bound to take into consideration certain other items. If in respect to any of these items the owner is not satisfied with the award made by the Land Acquisition officer he should require the Collector to make a reference to the Court stating the grounds on which the objection to the award is taken and the Collector is also required to make the reference stating among other things the grounds on which the amount of compensation was determined by him and the Secretary of State is not entitled to object to the award. If that is so and if the items are objected to by the owner as being insufficient in his opinion and the Secretary of State is not entitled to object the only question will be whether the item awarded is insufficient and if so what larger amount should be awarded. There can be no issue upon the pleadings such as whether the item awarded is by itself excessive and therefore a lesser amount should be awarded. We think the learned Judges in the Madras case have not dealt with that aspect of the matter in considering whether the decision in I. L. R. 38 C. 230 is correct or incorrect. Mr. Justice Sundara Aiyer evidently thinks that S. 20 refers back to S. 18 (1). It must be admitted that it also refers back to S. 18 (2). It is impossible to hold that what should be regarded as of importance to the parties as the ultimate question for determination is whether the amount awarded as a whole should be accepted. If that is so there is no reason whatever for stating that in S. 23 that the Land Acquisition officer should take into consideration the several items stated therein and determine the grounds on which compensation should be awarded. The collector cannot state the grounds without referring to the

1. (1911) 22 M. L. J. 379.

several items which he should take into consideration under S. 23. S. 25 (1) which requires that the amount awarded by the Court shall not be less than that awarded by the Collector or not more than the amount claimed by the claimant does not refer to the mere *total* amount. The proper construction of the clause is to take it as applying to the several items of compensation. Mr. Justice Sundara Aiyar speaks of the *total* amount in S. 25 (1). The section does not speak of 'total' amount. It only use the word 'amount.' The objection by the claimant may be to all the items or merely to some of the items. The language of the clause is used so as to be capable of being applicable to both kinds of objection. As the section says that the court has no power to award a greater amount than that claimed in order that it may not be inferred from that the Court may have power to award a lesser amount than that awarded by the Collector it is said that the court has no such power. Further if the word "total" should be read into "amount awarded by the Collector" it will follow that the said term "total" should also be read into "amount so claimed." If that were so, the court would have power to increase the other items though no objection may have been taken to them provided that that the total amount is not exceeded. That, however, is mainfestly absurd. The natural meaning of the term 'amount' is to take it as applicable to the item or items objected to. We are not therefore satisfied with the reasoning of the learned Judges in the Madras case.

SUMMARY OF ENGLISH CASES.

In re Brukbect Permanent Benefit Building Society.

[1912] 2 Ch. 183 (C. A.)

Doctrine of Ultra vires—Subrogation—Rights of creditors advancing money for purposes ultravires and share holders inter se.

Suppose a Company with borrowing powers for a certain purpose, borrows for a quite unconnected purpose, *e.g.*, a building Society sets up a banking business and receives deposits, what is the position of the lenders, was the question that engaged the attention of the Court of Appeal in this case. The conclusion of the majority (who agreed with the trial Judge) was that it is only after the share holders are paid their shares in full that the creditors can come in.

The doctrine of subrogation might come to the relief of the creditors to some extent for instance if the amount was utilised for

the payment of a binding debt, the creditor can ask to be placed in the place of the creditor who is discharged. If the money could be traced into the hands of the company, then also the creditor could ask to be repaid. But if neither of these things is possible the creditor has no remedy but that allowed to him on equitable grounds in *In re Guardian Permanent Benefit Building Society* [1] of coming in after the share holders are paid in full.

Fletcher Moulton L. J. was however of opinion that the share holders cannot take advantage of the fraudulent conduct of their agents and are bound to restore the amounts borrowed before they can pay themselves especially where the shareholders who claim priority are the parties that have transgressed the limits of the authority conferred upon the company.

Pennington *v.* Cayley. [1912] 2 Ch. 236.

Practice—Death of trustee (plaintiffs) in fore-closure action —Not revivor but addition as defendants on refusal of new trustees to be plaintiffs.

In a foreclosure action brought by trustees, after the final order for foreclosure some of the trustees died. The question was what was the course to be adopted by a defendant who was desirous of making an application to vacate the order. He made an application for revivor. But the court held that the proper course was to apply to the trustees for their consent to add them as plaintiffs and if they refused, to apply to the court to add them as defendants.

Meyers *v.* Hennell. [1912] 2 Ch. 256.

Construction of Validating clause—Education act rules— "Defect in election or appointment"— Necessity of declaration of religious belief.

Under the final order by the Board of Education under the Education Act, 1902 " no person was entitled to act as foundation Manager of a non-provided Church of England Elementary school until he had signed a declaration that he was a member of the Church of England." At the time the body of Managers of a School purported to dismiss a headmaster, three of them had not signed the requisite declaration. A section of the act provided that " no proceedings of the body shall be invalidated by any defect in the election

1. (1882) 23 Ch. D. 440.

appointment or qualification of any Manager.' It was held that the words of the final order did not amount to an absolute prohibition and that this section validated the act. There was a further objection that some of the nominated Managers were not properly nominated and that those that appointed them had no authority so to do. This defect was also held to be cured by the section.

Herbert v Herbert. [1912] 2 Ch. 268.

Conversion of realty into personalty—Order for sale of property of persons not sui juris—Effect of subsequently becoming sui juris.

Where property is taken compulsorily from any person who is not *sui juris* and who is not competent to make the subsequent alteration in the disposition or the devolution of that property, which would naturally follow such a change the presumption is if the words of the act of Parliament really admit of that interpretation that the legislature did not intend to interfere with any legal rights or any legitimate expectations of any persons whatsoever. For instance under the Partition Acts, where sale of realty is directed, the share of the person not *sui juris* is not converted into personalty. The fact that the person became *sui juris* before the payment was made and did not express his intention one way or the other does not have the effect of converting it. This rule applies equally to feme coverts who subsequently become discovert.

Griffith v. Richard Clay and Sons Limited.

[1912] 2 Ch. 291 (C. A.)

Ancient light—Damages for disturbance—Dimunition of value of site as building site, not merely of the house.

Affirming the Judgment of Neville J. reported in (1912) 1 Ch. 291, the Court of appeal held in this case that the damages recoverable by a person whose ancient lights have been disturbed are not confined to the depreciation of the house but extend to the depreciation in the value of the whole premises considered as a building site, whether as a house site or as a factory site, to which latter purpose it was more adapted.

General Estates Co. v. Beaves. [1912] 2. K. B. 398.

Practice—Transferred action—County Court—Title to franchise—Jurisdiction—High Court—Writ of certiorari.

S. 126 of the County courts Act provided that the High Court or any judge thereof may order the removal by the writ of *certiorari* or otherwise of any action commenced in the county court to the High Court.

The plaintiff had issued a writ in the Chancery Division of the High Court for an injunction to restrain the defendants from disturbing a ferry. The judge in the Chancery on an interlocutory application for an interim injunction ordered the transfer of the action to the county court. The county court had no jurisdiction to try any question involving title to any franchise. It became apparent in the course of the proceedings that the title to the ferry was in question. *Held* that the High Court had jurisdiction to order the transfer of the action to the High Court.

Cowern v. Nield. [1912] 2. K. B. 419.

Contract—Infant, goods supplied by—Failure of consideration—Liability of infant—Money had and received.

An infant carrying on business as a hay and straw merchant entered into a contract with defendant to supply him with some cloves and hay. The defendant sent a cheque for the hay and cloves ordered. The infant merchant failed to deliver the goods. *Held* in an action for money had and received that the infant would not be liable though the contract was for the infant's benefit unless it can be proved that the infant obtained the money by fraud.

In re **Milles**: *Ex-parte* **Furniture and Fine Arts Depositaries, Ltd.** [1912] 2. K. B. 451.

Bankruptcy—Practice—Judgment in county court—Payment into court—Bankruptcy notice for full amount—Bankruptcy Acts 46 and 47 Vict. Ch. 52, S. 4. Subs., 91—County Courts Act.

Some creditors obtained judgment against a debtor in the County court which directed payment into court. The debtor paid a portion of the amount into court. The creditors objected and issued Bankruptcy notice for the full amount. *Held* that after payment into

court execution should only issue for the balance remaining after giving credit fer the payment.

Plant v. Collins Deeley Claimant. [1912]: 2. K. B. 459.

Interpleader—Judgment for a debt—Execution and sale of judgment-debtor's goods—Claim by assignee of debt—Proceeds of sale.

In this case plaintiff assigned by deed all his debts and sums of money owing to him to the claimant D. by way of mortgage. P. sued the debtor subsequently and recovered judgment. In execution the debtor's goods were attached and sold. D. then claimed the proceeds of sale in the hands of the bailiff. He took out an interpleader summons. *Held* that the claimant must make out a claim to the goods taken in execution before he could claim the proceeds of sale. As the goods were admitted to be that of the judgment-debtor the claim could not succeed.

Rex v. Hudson. (C. C. A.) [1912] 2. K. B. 464.

Criminal Law—Evidence—Prisoner as witness—Previous conviction—Questions as to—Imputation on character of prosecution witnesses.

Where a prisoner when defended by counsel has through that counsel accused the witnesses of having committed the crime with which he (the prisoner) is charged, the prisoner can be cross-examined as to his character on previous convictions.

In re **Fisher and Sons.** [1912] 2. K. B. 491.

Bankruptcy—Practice—Executors carrying on business in firm name—Receiving order against firm—Adjudication—Whether executors partners.

Where executors carried on their testator's business under the powers conferred by his will in the same firm name in which the business was carried on and subsequently a receiving order was made against them in the firm name on a bankruptcy petition by some creditor who recovered judgment against the firm. *Held* that they could not be adjudicated bankrupts as partners though they could be proceeded against individually and made bankrupts.

In re Prigoshen : *Ex-parte* Official Receiver.

Bankruptcy—Assignment deed—Composition—Trustee under deed authorised by creditors not to enforce deed—Key of business premises returned to debtor—Liability of trustee under deed to account to trustee in bankruptcy.

In this case a debtor assigned by deed all his stock in trade and and effects to a trustee for the benefit of his creditors and the key of the business premises was entrusted to the trustee. The trustee valued the stock in trade and at a meeting of the creditors the debtor offered a composition which the creditors accepted subject to satisfactory security being given. The creditors instructed the trustee not to enforce the deed. The trustee delivered up the key of the premises to the debtor which enabled him to dispose of the goods. The debter became bankrupt. *Held* that the trustee under the deed of assignment took possession of the goods and as such liable to account to the trustee in bankruptcy of the debtor.

JOTTINGS AND CUTTINGS.

The Retirement of Lord Robson.—After a very short period of judicial service as a Lord of Appeal in ordinary, Lord Robson has found it necessary on the advice of his doctors to retire. It has been known for some time that his health was impaired, and he will carry with him into his retirement the best wishes of the whole profession for his speedy recovery and the opportunity of enjoying his well-earned leisure. The strain of the Attorney-General's office to-day, with its combination of incessant legal and political duties, exhausts, we fear, all but the very strongest. Sir John Lawson Walton, Lord Robson's predecessor, died in harness, and Sir Samuel Evans, his successor, resigned the office after a very short term for the less exacting duties of the President of the Probate and Divorce Court. Lord Robson had not the opportunity, unfortunately, of making his mark in our judicial annals, but at the Bar he gained a distinguished reputation as a commercial lawyer, and in the House of Commons, unlike many legal members, he early gained the ear of the assembly and was recognised as one of the most powerful debaters on the Liberal side. As Attorney-General he made a dignified head of the Bar, and perhaps his greatest legal service was his successful presentation of the British case in the Newfoundland Fisheries Arbitration at Hague in 1910. It is to be hoped that his large experience of affairs will not be altogether lost to the nation, and that, though free

from the duties of a Lord of Appeal, he will be able from time to time to assist the House of Lords and the Judicial Committee, where his large democratic sympathies will be especially valuable.—*The Law Journal.*

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The New Judicial Appointments—The judicial appointments consequent on the retirement of Lord Robson should, on the whole, add to the strength of the Courts and will give general satisfaction to the profession. The fact that the retiring Law-Lord was a common-law lawyer made it necessary that the promotion should be given to common law judges, and explains why the Master of the Rolls should not have ascended. Lord Justice Fletcher Moulton will bring to the two highest tribunals of appeal a wealth of learning and judicial knowledge, an intellectual mastery and an independence of view which should give him a place among the great builders of our law. In the Court of Appeal he has shown a strong faculty of dissent, which has not tended, perhaps, to the certainty of its judgments, but his opinion has on not a few occasions been upheld by the higher tribunal, and his desire to mould the law to fresh needs will have full play in his new sphere. Mr. Justice Hamilton has been on the Bench but three years, but his commanding grasp of commercial law in all its branches has marked him out for early promotion, and his presence in the Court of Appeal will certainly add to the authority of its judgment in commercial cases. His powers are now at their prime, and for that reason no doubt he was preferred to one of his senior colleagues, whose reputation is equally distinguished. Mr. Rowlatt has ascended to the Bench after seven years of excellent work as Junior Counsel to the Treasury, on the common-law side. That office gives its holder almost a prescriptive right to a judgeship, and Mr. Rowlatt brings to his new work those qualities which made his predecessors, Lord Bowen, Sir A. L. Smith, and Mr. Justice Wright, such distinguished members of the Bench—scholarly precision, literary attainments of a high order, great industry, and wide experience. The appointment of Mr. Stewart-Smith, K. C., to succeed to the late Vice-Chancellor Leigh-Clare in the office of Vice-Chancellor of the Palatine Court, though foreshadowed by his acting as deputy for some months, will not command the same general satisfaction. Mr. Stewart-Smith is, indeed, a Chancery leader of distinction, but there is a suggestion of political considerations in his selection for the most lucrative and the most dignified judicial post in the Kingdom outside the High Court; and there is at least one other Chancery leader who, by his legal

reputation and his association with the country, would seem to have had superior claims to the office.—*Ibid.*

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Miscellany.—Lord Halsbury will complete his eighty-seventh year of his birthday on Tuesday next, having been born on September 3, 1825. It is nearly forty years since he first became a Law Officer—he was Solicitor-General in Lord Beaconsfield's Government of 1875-1880—and nearly thirty years since he was first made Lord Chancellor. Two Lord Chancellors of the Victorian era died nonagenarians; Lord Lyndhurst was ninety-one when he passed away, and Lord St. Leonards reached the age of ninety-three. The mental and physical vigour which Lord Halsbury continues to display encourages the hope that his years will be as many as those of any of his predecessors. His seventeen years on the Woolsack, which left his energy quite unimpaired, form a record excelled only by Hardwicke and Eldon.—*The Law Journal.*

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A Unique Event.—The spectacle of a father as Chief Justice, a son as Crown Prosecutor, and another as defending counsel in a Supreme Court case, not to speak of a son-in-law as Judge's Associate is probably a unique one. It occurred in the Kalgoorlie Circuit Court on Wednesday last, when the Chief Justice (Sir Stephen Parker) was on the bench, and before him appeared one son (Mr. Frank Parker) in the role of Crown Prosecutor, while another son (Mr. Hubert Parker), one of the younger members of the bar in Western Australia, was the defending counsel. The case in which they were engaged lasted about two hours and three-quarters, during which period His Honor was not troubled with lively exchanges between the opposing advocates, nor called upon to decide any knotty point that one might have raised or the other. The way in which Mr. Hubert Parker pleaded the cause of his client against the array of evidence adduced by Mr. Frank Parker, the Crown Prosecutor, won the day.—*The "Daily News," Perth, W. A.*

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Liability for Acts of domestic animals.—The broad distinction at Common Law between the liability of the owner of an animal of a dangerous kind and of the owner of a tame domestic animal for injuries caused by it to human beings is that the

former keeps the animal at his peril—if it does mischief he is generally answerable without proof of negligence; while in the case of an animal of a usually harmless kind the owner is only liable if it be proved that he knew of its vicious propensities. The principle is embodied as regards dogs in the popular, though somewhat inaccurate saying, that every dog is entitled to one bite. An extreme illustration of the principle is the case of a horse which was allowed to stray on to the highway and kicked a child; the owner was held not to be liable, because straying horses do not usually kick children, and he had no reason to think that this horse was likely to commit such an act. A curious case on the point, *Clinton v. Lyons*, came last week before a Divisional Court on appeal from the Westminster County Court. A lady had gone into a tea-shop belonging to the defendants, accompanied by a little dog. The tea-shop cat, which had kittens, attacked and bit the dog, probably suspecting it of evil designs on her offspring, whereupon the lady picked up the dog and handed it to a companion. Afterwards the cat jumped on to her shoulder and bit her: and for the injury she sustained the jury awarded her damages, on the ground that the defendants had not taken reasonable precautions for the safety of their customers. Yet the attack on the lady was not, said the Court, acting no doubt on their own knowledge of cat nature, an occurrence which ought reasonably to have been anticipated and guarded against. Human beings can usually go with perfect safety into a room where there is a cat even with kittens; and so they held that the defendants were not liable, because the injury to the lady was not an ordinary consequence of keeping a cat in a tea-shop.—*The Law Journal.*